IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

MFA.No. 1247 of 2000(A)

OA.46/1999 of FOREST TRIBUNAL, KOZHIKODE
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APPELLANT:
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1. PADALODIYIL MARY ANTONEY,
W/O.ANTONEY, AGED 52 YEARS,
PADALODIYIL HOUSE, ANGADIKADAVU P.O., KANNUR.

2. PADALODIYIL THANKACHAN ANTONEY,
S/O.ANTONEY, AGED 34 YEARS,
PADALODIYIL HOUSE,
ANGADIKADAVU P.O., KANNUR.

3. PADALODIYIL ROY ANTONEY,
S/O.ANTONEY, AGED 33 YEARS,
PADALODIYIL HOUSE, ANGADIKADAVU P.O.
KANNUR.

BY ADV. SRI.V.V.SURENDRAN
SRI.TOJAN J. VATHIKULAM

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. THE CUSTODIAN AND CONSERVATION OF FORESTS,
OLAVAKKODE CIRCLE, 'ARYA BHAVAN'. FOREST COMPLEX,
RAILWAY COLONY, OLAVAKKODE, PALAKKAD.

BY GOVERNMENT PLEADER SRI.M.P.PRAKASH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18.9.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.7233 OF 2000 IN MFA.1247/2000:

DISMISSED

Sd/-
18.9.2007 J.B.KOSHY, JUDGEd
Sd/-
K.HEMA, JUDGEd

/TRUE COPY/

PA TO JUDGE

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 1247 OF 20O0

Dated this the 18th day of September, 2007

JUDGMENT

Koshy, J.

It is the case for the applicants that 8 acres of land was under their possession and cultivation and out of the 8 acres, forest officials interfered with the possession and cultivation of 1.30 acres of land alleging that it is a vested forest under Section 3(1) of the Kerala Private Forests (Vesting and Assignment) Act. The claimants relied on a Commission report in a civil case and contended that the land in question was cultivated at the time when the Act came into force. The Forest Department objected to it and the Tribunal made a local inspection. The Tribunal in the local inspection report dated 8.6.1998 noticed that with regard to the land in question, there is no dispute that it is cultivated. The Village Officer has marked one portion shaded and the other portion unshaded and it is stated that the property with green shade was cultivated with cashew and the property unshaded was cultivated with rubber and cashew trees. It was found that the cashew trees and rubber plantation therein were more than 30-40 years old. It was also found by the Tribunal that the

land in question though situated in Malabar is not covered by the Madras Preservation of Private Forests Act. It is not a part of forest. No forest trees are found therein. However, application was rejected as title was not satisfactorily proved. We are of the opinion that the question of ownership can only be raised when the petitioners are claiming exemption under Section 3(2) or 3(3) of the Act. Here, no forest trees are found in the land in question. No part of it was covered by MPPF Act. It is not a wooded area. It is a pucca cultivated land. Land covered in the judgment is not a private forest as defined in the Act. The Tribunal held that there is no difference between the undisputed land and the land in question. If it is not a private forest, it does not vest in the Government under Section 3(1) of the Act. Therefore, the action of the State in interfering with the possession of the applicants with regard to the scheduled land is illegal and we allow the appeal and set aside the order of the Tribunal.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1247 OF 2000

JUDGMENT

18.9.2007